

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 547

Case No. 87-20

(New Macedonia Baptist Church)

November 16, 1987

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on July 9, 1987. At that hearing session, the Zoning Commission considered an application from the Robert L. Walls Senior Citizens Corporation, on behalf of the New Macedonia Baptist Church, pursuant to Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Section 3022 of that title.

FINDINGS OF FACT

1. The application, which was filed on April 10, 1987, requests a change of zoning from R-2 to R-5-A for lots 29 through 34 in Square 5365 located at 4339 Bowen Road, S.E.
2. The subject site is located in the Bradbury Heights neighborhood of the District of Columbia, contains approximately 22,850 square feet of land area, and is improved with a single-family dwelling at the north-eastern portion of the site and is unimproved at the remaining portion of the site.
3. The applicant proposes to construct a multi-family apartment building for senior citizens.
4. On May 11, 1987, when the Zoning Commission authorized the scheduling of a public hearing, it determined that it would also consider C-1 rezoning as an alternative to the R-5-A rezoning sought by the applicant.
5. The R-2 District permits, matter-of-right development of single-family detached and semi-detached dwellings units with a minimum lot area of 3,000 square feet a minimum lot width of thirty feet, a maximum lot occupancy of forty percent, and a maximum height of three-stories/forty feet.

6. The R-5-A District permits matter-of-right single-family detached and semi-detached dwellings, and with the approval of the Board of Zoning Adjustment low density development of general residential uses including rowhouses, flats, and apartments to a maximum floor area ratio (FAR) of 0.9, a maximum lot occupancy of forty percent, and maximum height of three-stories/forty feet.
7. The C-1 District permits matter-of-right low density development of office, retail and service commercial uses, and all residential uses to a maximum height of forty feet/three stories, a maximum FAR of 1.0 and and maximum lot occupancy of sixty percent.
8. The District of Columbia Generalized Land Use Element Map of the Comprehensive Plan for the National Capital includes the subject site in the low density residential land use category.
9. Uses in the immediate area of the subject site include single-family residential uses to the southeast of the site and across a fifteen foot public alley, the First United Methodist Church to the southwest of the site, single-family residential uses to the northwest of the site and across Bowen Road, and neighborhood commercial uses to the northeast of the site and across Ridge Road.
10. Zoning in the immediate area of the subject site include R-2 to the southeast, southwest and northwest, and C-1 to the northeast.
11. The applicant requested the rezoning in order to permit the construction of a forty-five (45) unit senior citizen's apartment building with some ancillary uses. Such use of the property is not directly controlled by Zoning Commission action. The applicant indicated that the city has an urgent need to develop housing for senior citizens.
12. On May 14, 1987, the applicant recorded a restrictive covenant with the land records office of the District of Columbia, which limits the development of the subject site to senior citizen housing.
13. On May 18, 1987, the applicant amended the restrictive covenant to locate a barber/beauty shop in the building which would be internally oriented and would only serve the residents of the building, some of whom would have limited ambulatory ability, and to locate a day-care center for children.
14. Counsel for the applicant filed a legal memorandum,

entered in the record as Exhibit No. 17B, which addressed the issue of why the originally requested R-5-A does not constitute illegal "spot zoning". He indicated that the applicant, however, preferred C-1 rezoning in lieu of R-5-A.

15. The applicant, through testimony presented by its architect, indicated that the proposal is not inconsistent with the Comprehensive Plan, was consistent with the purpose and goals of the Zoning Regulations, and would not adversely affect the architectural nor residential character of the neighborhood. He indicated that there would be minimal parking generated by the proposal, largely because of the type of uses and the users of the building.
16. The applicant requested permission to operate the child development center in the basement of the senior citizen apartment house. The center will be strictly subordinate to the principal use of the site as a senior citizen's apartment. The applicant indicated that the two uses will complement one another by providing seniors and the young with opportunities for beneficial interaction. The applicant noted that the apartment residents may choose to work at the child development center.
17. The District of Columbia Office of Planning (OP), by memorandum dated June 25, 1987 and by testimony presented at the public hearing, recommended approval of C-1 rezoning, subject to the execution of the covenant limiting the uses of the site to senior citizens housing, and a child development center and a barber/beauty shop as ancillary uses.
18. OP indicated that the Comprehensive Plan addresses the need for fostering the development of elderly housing and child care services. The OP memorandum included the following:
 - a. Section 307 - Objectives for Elderly Housing states that;

"The objectives of elderly housing are to provide for the housing needs of elderly households and to reduce the overall cost of housing among elderly households."
 - b. Sec. 308 Policies in Support of the Elderly Housing Objectives.

The policies established in support of the elderly housing objectives are as follows:

- i. "Establish as a matter of major governmental priority the production of housing for elderly households;
 - ii. Expedite public programs to stimulate housing production and housing rehabilitation in urban renewal areas and other publicly owned sites, act to complete the development of urban renewal properties designated for elderly housing, and review and simplify requirements affecting this development;
 - iii. Provide zoning incentives to developers prepared to build elderly housing such as permitting additional densities in exchange for incorporating elderly housing in development projects, and give zoning preferences to mixed-use sites which include housing near appropriate Metrorail stations; and
 - iv. Continue to rehabilitate and improve the District's publicly owned elderly housing units."
19. OP further indicated that the Comprehensive Plan addresses the need for self support services, such a child development centers.

Section 1009 - Objectives for Income Maintenance and Economic Self-Support Services states that;

"the income maintenance and economic self-support services such as child development centers objectives are to provide income maintenance and support services where needed to the maximum extent possible and to assist families and individuals to achieve or maintain economic self-support."

Objectives particularly applicable to this application are as follows:

- a. Provide permanent residential settings, day-care services, and after-school programs and provide family and health counseling, nutrition services, and employment training with income assistance programs for indigent parents; and
 - b. Promote health, environmental, and life-style conditions to strengthen the well-being of children and youth.
20. The District of Columbia Department of Public Works

(DPW), by memorandum dated June 26, 1987, indicated that the proposed development will be adequately served by public transportation, that there is adequate water and sewer capacity to serve the proposed development, and that the proposal would have a minimal impact on the surrounding neighborhood, subject to the limitations of the covenant.

21. The District of Columbia Fire Department (DCFD), by memorandum dated June 3, 1987, has no objections to the rezoning of the site. However, the DCFD indicated that certain referenced life and fire safety features must be included in a forty-five (45) unit senior citizens apartment building.
22. The District of Columbia Office on Aging (DCOA), by memorandum dated June 10, 1987, indicated its support of the applicant in helping to meet the housing needs of the elderly and for working in cooperation with the citizens of the affected neighborhood.
23. The District of Columbia Department of Housing and Community Development (DHCD), by memorandum dated June 1, 1987, indicated that DHCD had no objections to the rezoning and supports the proposed housing for the elderly.
24. The District of Columbia Metropolitan Police Department (MPD), by letter dated June 18, 1987, indicated that it has no objections to the rezoning in order to facilitate the development of a forty-five (45) unit apartment building.
25. Advisory Neighborhood Commission (ANC)-7E, by letter dated July 2, 1987 and by testimony presented at the public hearing, supported the application. The ANC did not express concerns and issues in its letter.
26. Robert Paul Kilpatrick, party in the proceedings, by letter dated June 19, 1987, opposed the application because of parking and traffic congestion issues. Subsequently, by letter dated September 14, 1987, Mr. Kilpatrick withdrew his opposition to the application.
27. There was no testimony in opposition to the proposal at the hearing. No additional letters were received in opposition.
28. One person testified at the hearing in support of the application. There were no parties in support nor were any letters received in support of the proposal.
29. At the conclusion of the hearing and pursuant to the

June 19, 1987 letter from Mr. Kilpatrick, the Zoning Commission requested the DPW to conduct an additional review of the traffic and parking issues. The Commission also requested the Office of the Corporation Counsel (OCC) to review the applicant's covenant and comment on the legality, enforceability, and any other matter that would be germane.

30. Subsequently, DPW, by memorandum dated August 24, 1987, concluded that the development will have a minimal impact on the local street system. DPW indicated that neither the child development center nor the barber/beauty shop will be a major traffic generator.
31. OCC, by memorandum dated July 31, 1987, concluded that the applicant's covenant was unenforceable because it did not name a specific beneficiary. OCC also indicated that there was nothing to prevent the applicant from amending the covenant to allow additional uses of the property. OCC made some recommendations that addressed its concerns.
32. The Commission concurs with the recommendation of the OP and the position of the DPW, DCFD, DCOA, DHCD and the MPD. The Commission notes that the concern of the DCFD regarding life and fire safety can be addressed during the permit process.
33. The Commission finds that, notwithstanding the fact that the land use element of the Comprehensive Plan includes the subject site in the low density residential category, other elements of the Comprehensive Plan; namely the housing element, suggests that the proposal is not inconsistent with those elements. The Commission believes that upon consideration of all of the relevant elements of the Comprehensive Plan, it has struck a reasonable balance in its decision.
34. The Commission finds that the land-use covenant that was executed by the applicant limits the use of the subject site to a multi-family residential building for senior citizens, a child development center, and a barber/beauty shop, which is for the occupants of the building and not the general public, subject to rezoning the site to R-5-A or C-1. The covenant was further amended a second time to include the Government of the District of Columbia as a party.
35. At the request of the Commission, the Executive Director of the Zoning Secretariat, by memorandum dated October 1, 1987, requested the Office of the Corporation Counsel (OCC) to review and comment on the appropriateness and legality of the inclusion of the District of Columbia as a party to the covenant.

36. OCC, by memorandum dated October 9, 1987, indicated that the applicant's second amendment to the covenant is enforceable with the District of Columbia being named a beneficiary in the subject covenant.
37. Counsel for the applicant, by letter dated November 12, 1987, responded to a concern of the Executive Director of the Zoning Secretariat regarding the use of language in the covenant that creates an ambiguity which could affect the proper use of the site. The concern of the Executive Director is based upon covenant language which refers to "a Senior Citizens Residence Facility or a Senior Citizens Apartment House, as they may be defined in the Zoning Regulations...". Neither term is explicitly defined in the Zoning Regulations.
38. The Commission finds that Advisory Neighborhood Commission - 7E was in support of the project.
39. As to the concerns of the party in this proceeding who withdrew his opposition, the Commission does not find that the proposal will generate parking or traffic problems. The Commission is persuaded that the DPW has fully addressed these concerns in its study.
40. On November 16, 1987, at its regular monthly meeting, the Zoning Commission discussed the case, including the concerns of the Executive Director and the response thereto from counsel for the applicant. The Commission finds that the land use covenant, as amended by the applicant, adequately limits the use of the subject site. The Commission notes that 11 DCMR 199.8 resolves any potential ambiguity about the use of the site.
41. The proposed action of the Zoning Commission to approve C-1 rezoning was referred to the National Capital Planning Commission (NCPC), pursuant to the terms of the District of Columbia Self Government Reorganization Act. The NCPC, by report dated October 5, 1987, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
42. The Commission finds that the applicant has satisfied the criteria of 11 DCMR 102.

CONCLUSIONS OF LAW

1. The rezoning of this site to C-1 is compatible with city-wide goals, and programs, and is sensitive to environmental protection and energy conservation.

2. Approval of this application to C-1 is not inconsistent with the Comprehensive Plan for the National Capital.
3. Approval of this application is consistent with the purposes of the Zoning Act (Act of June 20, 1938, 52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
4. Rezoning the site to C-1, as set fourth herein, will not have an adverse impact on the surrounding community.
5. The approval of this application will promote orderly development and conformity with the entirety of the District of Columbia Zoning Plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
6. The Commission notes the execution of a covenant, as amended, that restricts the use of the site to an apartment building for senior citizens, a child care center, and a barber/beauty shop.
7. The Commission further notes, pursuant to the advice of the Office of the Corporation Counsel, that the Government of the District of Columbia may be a party to the covenant.
8. Pursuant to 11 DCMR 199.8, a term which is not explicitly defined in the Zoning Regulations shall have the meaning as defined in Webster's Unabridged Dictionary.
9. The Commission did not accord "great weight" consideration to ANC-7E because the ANC did not raise issues and concerns to the Commission, but only expressed its opinion.

DECISION

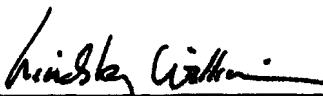
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application as follows:

Change from R-2 to C-1 lots 29, 30, 31, 32, 33, and 34 in Square 5365 located at 4339 Bowen Road, S.E.

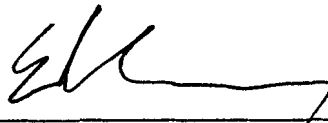
Vote of the Zoning Commission taken at the regular public meeting on September 21, 1987: 3-0 (John G. Parsons, Maybelle T. Bennett, and Lindsley Williams, to approve C-1 - George M. White and Patricia N. Mathews, not voting not having participated in the case).

This order was adopted by the Zoning Commission at its regular public meeting on November 16, 1987 by a vote of 4-0 (Patricia N. Mathews, Maybelle T. Bennett and Lindsley Williams, to adopt as amended, and John G. Parsons, to adopt by absentee vote - George M. White, not present not voting).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is 08 JAN 1988.



LINDSLEY WILLIAMS
Chairman
Zoning Commission



EDWARD L. CURRY
Executive Director
Zoning Secretariat

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